



July 17, 2020

Barbara Neal
Executive Director
Vermont Enhanced 9-1-1 Board (the "Board")
100 State St., 4th Floor
Montpelier, VT 05620-6501

Dear Executive Director Neal and the Board:

CTIA appreciates the opportunity to provide feedback on the revised draft rule issued by the Board in response to the passage of S.301 by the Legislature ("Revised Rule").

The Board has noted that the most recent changes to the Revised Rule are based on the California Governor's Office of Emergency Services ("CalOES") Emergency Outage Reporting Regulations that went into effect on July 1.¹ Carriers are continuing to work out operational and other issues related to the Emergency Regulations with the expectation that CalOES will begin the final rulemaking process later this summer. In addition, CTIA notes that the Board's Revised Rule departs from the current CalOES emergency regulations in multiple ways, including by requiring information on the number of impacted subscribers and details on the services impacted by a particular outage. For these reasons, the Revised Rule may not accurately reflect the final rule adopted by CalOES.

Further, the CalOES rule was amended to define outage to mean a "significant degradation in the ability of an end user to establish and maintain a channel of communications to make 911 calls or receive emergency notifications as a result of failure or degradation in the performance of a communications provider's network." The modifier "significant" clarifies that an outage is defined to occur only when the

¹ See Email from Executive Director Neal re: Revised Outage Notification Rule for Review and Feedback (Jul. 9, 2020).



degradation affects the end user to such an extent that it causes an impairment or inability to establish and maintain a channel of communication.² Given that Vermont intends to model its Revised Rule after California's, this important amendment must be included.

CTIA also remains concerned that the Revised Rule does not go far enough in ensuring that sensitive network information will be kept confidential. Carriers' efforts to ensure appropriate confidential treatment for this information are not an effort to withhold important public safety information. Rather, as CTIA has previously noted, granular, carrier-specific outage information like that asked for in the Revised Rule relates to protected critical infrastructure information and could be used to determine the location of carriers' network components or network configurations, which could then be exploited by bad actors seeking to create or exacerbate service disruptions. This is why the U.S. Department of Homeland Security, the Federal Communications Commission, state public utility commissions, and communications carriers all agree these reports must remain confidential.³ CTIA urges the Board to ensure that Vermont not become the "weak link" for bad actors to target, threatening the security of networks that serve not just the State, but the entire nation. Further, this information is competitively sensitive and constitutes trade secrets under the Vermont Public Records Act ("VPRA").⁴

The Revised Rule maintains the requirement that report submitters must mark information they believe to be exempt from public disclosure and provide for the section of the VPRA on which each exemption relies.⁵ This is inconsistent with the California approach, which states that outage notifications are automatically determined to be confidential and the contents of the notifications shall not be

² See California Governor's Office of Emergency Services, Addendum to Finding of Emergency, *available at* <https://www.caloes.ca.gov/PublicSafetyCommunicationsSite/Documents/AddendumtoFindingofEmergency.pdf> (last accessed July 17, 2020) at p.1-2.

³ See Letter from CTIA Re: Board Proposal 19P-081 (filed Apr. 29, 2020) ("CTIA April Letter") at p. 2, fns. 2-3.

⁴ See 1 V.S.A. §317(c)(9), *see also* CTIA April Letter at p. 3.

⁵ See Revised Rule at Sections 6.1-6.2.



disclosed.⁶ Rather than have a blanket determination that the outage notifications and their contents are confidential, the Revised Rule forces carriers to identify the confidential information, thereby placing conflicting imperatives on report submitters. On one hand, the Revised Rule asks for report information “within two hours of discovery of each occurrence, or as soon as reasonably possible,”⁷ putting carriers under time pressure to prepare and submit the necessary reports. On the other hand, the Board is proposing a system where each and every report will have to go through internal legal review before submission to ensure that highly sensitive information is marked confidential and is not inadvertently revealed, which could delay getting these reports to the Board.

CTIA therefore reiterates its request that the Board treat carrier outage report submissions as inherently confidential. This approach, as CTIA has previously noted, is appropriate under the VPRA,⁸ and would ensure that carriers are not forced to delay reports, or – in their desire to be as timely as possible -- submit designations of confidentiality that do not appropriately capture sensitive information, leaving such information available for exploitation by bad actors.

However, if the Board chooses not to adopt such an approach, it should include in the Revised Rule a provision that allows for appropriate notice to carriers with sufficient time for them to object should the Board receive a public records request that it plans to grant, overruling a carrier’s designation of confidentiality. This approach better protects the privacy rights of third parties enshrined in the VPRA,⁹ and would align with the process that the Department of Public Service has followed with regard to

⁶ See Cal. Gov’t Code Section 53122(e).

⁷ Revised Rule at Section 4.2.1.

⁸ See CTIA April Letter at p.4. CTIA has also previously noted that the VPRA contains an exemption analogous to the federal Freedom of Information Act with regard to information that implicates infrastructure security, suggesting a presumption of confidentiality by the Board is appropriate. See *id.* at p.2, fn. 4; see also 5 U.S.C. §552(b)(7).

⁹ See 1 V.S.A. §315(a) (“All people, however, have a right to privacy in their personal and economic pursuits, which ought to be protected unless specific information is needed to review the action of a governmental officer.”)



information utilities designated as “confidential” in their annual reports.¹⁰ This provision would also allow carriers the necessary time to file for injunction, and afford outage reports a measure of appeals protection already afforded to the public under the VPRA should the Board make an erroneous judgment.¹¹ Indeed, because the courts cannot “un-ring the bell” of an improperly released report, the harm of such a mistake by the Board almost certainly outweighs any harm caused by the delay in access to an improperly withheld report that is later corrected by the court.

¹⁰ See State of Vermont Department of Public Service, Commercial Mobile Radio Service Provider Report template, available at https://publicservice.vermont.gov/sites/dps/files/Annual_Reports/PDF_forms/4%20CMRS%20020218.pdf (last accessed July 17, 2020) at p. 8. In 2019, the Vermont Superior Court recognized that, when requested public records contain sensitive information about third parties, “such third parties are routinely advised of the request and permitted to intervene” in litigation involving the scope of exemptions to the Vermont Public Records Act. Decision on Cross Motions for Summary Judgment, *Bell Atlantic Mobile Systems of Allentown, Inc. d/b/a Verizon Wireless, et al. v. Vermont Dept. of Public Service*, Dkt. No. 629-11-17 Wncv, et al., slip op. at 3 (Vt. Super. Ct. Jan. 3, 2019).

¹¹ See 1 V.S.A. §§ 318(c), 319(a).



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CTIA appreciates the Board's continued collaboration with stakeholders to address the issues in the Revised Rule and help ensure that the Board receives notification of provider outages that significantly degrade wireless callers' ability to reach 911 in Vermont while also appropriately safeguarding protected critical infrastructure information.

Sincerely,

/s/

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